

ASSEMBLY BILL

No. 1836

Introduced by Assembly Member Harman

January 22, 2004

An act to amend Sections 1354 and 1366.3 of, to amend and renumber Section 1368.4 of, and to add Article 5 (commencing with Section 1363.810) to Chapter 4 of, and Article 1 (commencing with Section 1368.3) and Article 2 (commencing with Section 1369.510) to Chapter 7 of, Title 6 of Part 4 of Division 2 of, the Civil Code, and to repeal Section 383 of the Code of Civil Procedure, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1836, as introduced, Harman. Common interest developments: dispute resolution.

Existing law provides that a common interest development association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings, in various circumstances, including enforcement of the governing documents. The existing Davis-Stirling Common Interest Development Act requires, before a common interest development association or an owner of a separate interest therein brings certain actions related to the enforcement of the development's governing documents, that the parties endeavor to submit their dispute to alternative dispute resolution, as specified.

This bill would revise and recast these provisions. The bill would specify that a common interest development association and an owner of a separate interest may enforce governing documents other than the declaration. The bill would create a new dispute resolution procedure

for conflicts between an association and a member, to be applied when the dispute concerns specified subjects. The bill would require an association to provide a fair, reasonable, and expeditious procedure for resolving these disputes, as defined by certain minimum standards, and would provide a procedure for associations that do not have a procedure of their own that meets the minimum standards, subject to good faith implementation.

The bill would revise the existing dispute resolution provisions, described above, to clarify their application to other nonjudicial processes and to broaden their applicability to include actions enforcing the Davis-Stirling Common Interest Development Act and the Nonprofit Mutual Benefit Corporation Law. Among other things, the bill would also provide for the tolling of a statute of limitations in certain circumstances, expand the permissible methods of service of a request to submit a dispute to the resolution process, and change the confidentiality protections applied to these procedures. The bill would make additional technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1354 of the Civil Code is amended to
2 read:

3 1354. (a) The covenants and restrictions in the declaration
4 shall be enforceable equitable servitudes, unless unreasonable,
5 and shall inure to the benefit of and bind all owners of separate
6 interests in the development. Unless the declaration states
7 otherwise, these servitudes may be enforced by any owner of a
8 separate interest or by the association, or by both.

9 (b) ~~Unless the applicable time limitation for commencing the~~
10 ~~action would run within 120 days, prior to the filing of a civil~~
11 ~~action by either an association or an owner or a member of a~~
12 ~~common interest development solely for declaratory relief or~~
13 ~~injunctive relief, or for declaratory relief or injunctive relief in~~
14 ~~conjunction with a claim for monetary damages, other than~~
15 ~~association assessments, not in excess of five thousand dollars~~
16 ~~(\$5,000), related to the enforcement of the governing documents,~~
17 ~~the parties shall endeavor, as provided in this subdivision, to~~
18 ~~submit their dispute to a form of alternative dispute resolution such~~



1 as mediation or arbitration. The form of alternative dispute
2 resolution chosen may be binding or nonbinding at the option of
3 the parties. Any party to such a dispute may initiate this process by
4 serving on another party to the dispute a Request for Resolution.
5 The Request for Resolution shall include (1) a brief description of
6 the dispute between the parties, (2) a request for alternative dispute
7 resolution, and (3) a notice that the party receiving the Request for
8 Resolution is required to respond thereto within 30 days of receipt
9 or it will be deemed rejected. Service of the Request for Resolution
10 shall be in the same manner as prescribed for service in a small
11 claims action as provided in Section 116.340 of the Code of Civil
12 Procedure. Parties receiving a Request for Resolution shall have
13 30 days following service of the Request for Resolution to accept
14 or reject alternative dispute resolution and, if not accepted within
15 the 30-day period by a party, shall be deemed rejected by that party.
16 If alternative dispute resolution is accepted by the party upon
17 whom the Request for Resolution is served, the alternative dispute
18 resolution shall be completed within 90 days of receipt of the
19 acceptance by the party initiating the Request for Resolution,
20 unless extended by written stipulation signed by both parties. The
21 costs of the alternative dispute resolution shall be borne by the
22 parties.

23 (e) At the time of filing a civil action by either an association
24 or an owner or a member of a common interest development solely
25 for declaratory relief or injunctive relief, or for declaratory relief
26 or injunctive relief in conjunction with a claim for monetary
27 damages not in excess of five thousand dollars (\$5,000), related to
28 the enforcement of the governing documents, the party filing the
29 action shall file with the complaint a certificate stating that
30 alternative dispute resolution has been completed in compliance
31 with subdivision (b). The failure to file a certificate as required by
32 subdivision (b) shall be grounds for a demurrer pursuant to Section
33 430.10 of the Code of Civil Procedure or a motion to strike
34 pursuant to Section 435 of the Code of Civil Procedure unless the
35 filing party certifies in writing that one of the other parties to the
36 dispute refused alternative dispute resolution prior to the filing of
37 the complaint, that preliminary or temporary injunctive relief is
38 necessary, or that alternative dispute resolution is not required by
39 subdivision (b), because the limitation period for bringing the
40 action would have run within the 120-day period next following

1 the filing of the action, or the court finds that dismissal of the action
2 for failure to comply with subdivision (b) would result in
3 substantial prejudice to one of the parties.

4 (d) Once a civil action specified in subdivision (a) to enforce
5 the governing documents has been filed by either an association or
6 an owner or member of a common interest development, upon
7 written stipulation of the parties the matter may be referred to
8 alternative dispute resolution and stayed. The costs of the
9 alternative dispute resolution shall be borne by the parties. During
10 this referral, the action shall not be subject to the rules
11 implementing subdivision (c) of Section 68603 of the Government
12 Code.

13 (e) The requirements of subdivisions (b) and (c) shall not apply
14 to the filing of a cross-complaint.

15 (f) In any action specified in subdivision (a) to enforce the
16 governing documents, the prevailing party shall be awarded
17 reasonable attorney's fees and costs. Upon motion by any party for
18 attorney's fees and costs to be awarded to the prevailing party in
19 these actions, the court, in determining the amount of the award,
20 may consider a party's refusal to participate in alternative dispute
21 resolution prior to the filing of the action.

22 (g) Unless consented to by both parties to alternative dispute
23 resolution that is initiated by a Request for Resolution under
24 subdivision (b), evidence of anything said or of admissions made
25 in the course of the alternative dispute resolution process shall not
26 be admissible in evidence, and testimony or disclosure of such a
27 statement or admission may not be compelled, in any civil action
28 in which, pursuant to law, testimony can be compelled to be given.

29 (h) Unless consented to by both parties to alternative dispute
30 resolution that is initiated by a Request for Resolution under
31 subdivision (b), documents prepared for the purpose or in the
32 course of, or pursuant to, the alternative dispute resolution shall
33 not be admissible in evidence, and disclosure of these documents
34 may not be compelled, in any civil action in which, pursuant to law,
35 testimony can be compelled to be given.

36 (i) Members of the association shall annually be provided a
37 summary of the provisions of this section, which specifically
38 references this section. The summary shall include the following
39 language:

1 ~~“Failure by any member of the association to comply with the~~
2 ~~prefiling requirements of Section 1354 of the Civil Code may~~
3 ~~result in the loss of your rights to sue the association or another~~
4 ~~member of the association regarding enforcement of the governing~~
5 ~~documents.”~~

6 ~~The summary shall be provided either at the time the pro forma~~
7 ~~budget required by Section 1365 is distributed or in the manner~~
8 ~~specified in Section 5016 of the Corporations Code.~~

9 ~~(j) Any Request for Resolution sent to the owner of a separate~~
10 ~~interest pursuant to subdivision (b) shall include a copy of this~~
11 ~~section. A governing document other than the declaration may be~~
12 ~~enforced by the association against an owner of a separate interest~~
13 ~~or by an owner of a separate interest against the association.~~

14 ~~(c) In an action to enforce the governing documents, the~~
15 ~~prevailing party shall be awarded reasonable attorney’s fees and~~
16 ~~costs.~~

17 SEC. 2. Article 5 (commencing with Section 1363.810) is
18 added to Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil
19 Code, to read:

20
21 Article 5. Dispute Resolution Procedure
22

23 1363.810. (a) This article applies to a dispute between an
24 association and a member involving their rights, duties, or
25 liabilities under this title, under the Nonprofit Mutual Benefit
26 Corporation Law (Part 3 (commencing with Section 7110) of
27 Division 2 of Title 1 of the Corporations Code), or under the
28 governing documents of the common interest development or
29 association.

30 (b) This article supplements, and does not replace, Article 2
31 (commencing with Section 1369.510) of Chapter 7, relating to
32 alternative dispute resolution as a prerequisite to an enforcement
33 action.

34 (c) This article does not apply to a dispute that is subject to
35 subdivision (c) of Section 1367.1.

36 1363.820. (a) An association shall provide a fair, reasonable,
37 and expeditious procedure for resolving a dispute within the scope
38 of this article.

39 (b) A dispute resolution procedure provided by an association
40 is presumed to be fair, reasonable, and expeditious. The

1 presumption created by this subdivision is a presumption affecting
2 the burden of proof.

3 (c) If an association does not provide a fair, reasonable, and
4 expeditious procedure for resolving a dispute within the scope of
5 this article, the procedure provided in Section 1363.840 applies
6 and satisfies the requirement of subdivision (a).

7 1363.830. A fair, reasonable, and expeditious dispute
8 resolution procedure shall at a minimum satisfy all of the
9 following requirements:

10 (a) The procedure may be invoked by either party to the
11 dispute.

12 (b) If the procedure is invoked by a member, the association
13 shall participate in, and is bound by any resolution of the dispute
14 pursuant to, the procedure.

15 (c) If the procedure is invoked by the association, the member
16 may elect not to participate in the procedure. If the member
17 participates but the dispute is resolved other than by agreement of
18 the member, the member shall have a right of appeal to the
19 association's board of directors.

20 (d) An agreement reached pursuant to the procedure, that is not
21 in conflict with the law or the governing documents, binds the
22 parties and is judicially enforceable.

23 (e) A member of the association shall not be charged a fee to
24 participate in the process.

25 1363.840. (a) This section applies in an association that does
26 not otherwise provide a fair, reasonable, and expeditious dispute
27 resolution procedure. The procedure provided in this section is
28 fair, reasonable, and expeditious, within the meaning of this
29 article, subject to good faith implementation by an association.

30 (b) Either party to a dispute within the scope of this article may
31 invoke the following procedure:

32 (1) The party may request the other party to meet and confer in
33 an effort to resolve the dispute. The request shall be in writing.

34 (2) A member of an association may refuse a request to meet
35 and confer. The association may not refuse a request to meet and
36 confer.

37 (3) The association's board of directors shall designate a
38 member of the board to meet and confer.



1 (4) The parties shall meet promptly at a mutually convenient
2 time and place, explain their positions to each other, and confer in
3 an effort to resolve the dispute.

4 (5) A resolution of the dispute agreed to by the parties shall be
5 memorialized in writing and signed by the parties, including the
6 board designee on behalf of the association.

7 (c) An agreement reached under this section binds the parties
8 and is judicially enforceable if both of the following conditions are
9 satisfied:

10 (1) The agreement is not in conflict with law or the governing
11 documents of the common interest development or association.

12 (2) The agreement is either consistent with the authority
13 granted by the board of directors to its designee or the agreement
14 is ratified by the board of directors.

15 SEC. 3. Section 1366.3 of the Civil Code is amended to read:

16 1366.3. (a) The exception for disputes related to association
17 assessments in ~~subdivision (b) of Section 1354~~ shall *Article 2*
18 *(commencing with Section 1369.510) of Chapter 7* does not apply
19 if, in a dispute between the owner of a separate interest and the
20 association regarding the assessments imposed by the association,
21 the owner of the separate interest chooses to pay in full to the
22 association all of the charges listed in paragraphs (1) to (4),
23 inclusive, and states by written notice that the amount is paid under
24 protest, and the written notice is mailed by certified mail not more
25 than 30 days from the recording of a notice of delinquent
26 assessment in accordance with Section 1367 or 1367.1; and in
27 those instances, the association shall inform the owner that the
28 owner may resolve the dispute through alternative dispute
29 resolution as set forth in ~~Section 1354~~ *Article 2 (commencing with*
30 *Section 1369.510) of Chapter 7*, civil action, and any other
31 procedures to resolve the dispute that may be available through the
32 association.

33 (1) The amount of the assessment in dispute.

34 (2) Late charges.

35 (3) Interest.

36 (4) All reasonable fees and costs associated with the
37 preparation and filing of a notice of delinquent assessment,
38 including all mailing costs, and including reasonable attorney's
39 fees not to exceed four hundred twenty-five dollars (\$425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.

SEC. 4. Article 1 (commencing with Section 1368.3) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 1. Miscellaneous Provisions

1368.3. An association established to manage a common interest development has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:

(a) Enforcement of the governing documents.

(b) Damage to the common area.

(c) Damage to a separate interest that the association is obligated to maintain or repair.

(d) Damage to a separate interest that arises out of, or is integrally related to, damage to the common area or a separate interest that the association is obligated to maintain or repair.

1368.4. (a) In an action maintained by an association pursuant to subdivision (b), (c), or (d) of Section 1368.3, the amount of damages recovered by the association shall be reduced by the amount of damages allocated to the association or its managing agents in direct proportion to their percentage of fault based upon principles of comparative fault. The comparative fault of the association or its managing agents may be raised by way of defense, but shall not be the basis for a cross-action or separate

1 action against the association or its managing agents for
2 contribution or implied indemnity, where the only damage was
3 sustained by the association or its members. It is the intent of the
4 Legislature in enacting this subdivision to require that
5 comparative fault be pleaded as an affirmative defense, rather than
6 a separate cause of action, where the only damage was sustained
7 by the association or its members.

8 (b) In an action involving damages described in subdivision
9 (b), (c), or (d) of Section 1368.3, the defendant or cross-defendant
10 may allege and prove the comparative fault of the association or
11 its managing agents as a setoff to the liability of the defendant or
12 cross-defendant even if the association is not a party to the
13 litigation or is no longer a party whether by reason of settlement,
14 dismissal, or otherwise.

15 (c) Subdivisions (a) and (b) apply to actions commenced on or
16 after January 1, 1993.

17 (d) Nothing in this section affects a person's liability under
18 Section 1431, or the liability of the association or its managing
19 agent for an act or omission which causes damages to another.

20 SEC. 5. Section 1368.4 of the Civil Code is amended and
21 renumbered to read:

22 ~~1368.4.~~

23 *1368.5.* (a) Not later than 30 days prior to the filing of any
24 civil action by the association against the declarant or other
25 developer of a common interest development for alleged damage
26 to the common areas, alleged damage to the separate interests that
27 the association is obligated to maintain or repair, or alleged
28 damage to the separate interests that arises out of, or is integrally
29 related to, damage to the common areas or separate interests that
30 the association is obligated to maintain or repair, the board of
31 directors of the association shall provide written notice to each
32 member of the association who appears on the records of the
33 association when the notice is provided. This notice shall specify
34 all of the following:

35 (1) That a meeting will take place to discuss problems that may
36 lead to the filing of a civil action.

37 (2) The options, including civil actions, that are available to
38 address the problems.

39 (3) The time and place of this meeting.

(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.

SEC. 6. Article 2 (commencing with Section 1369.510) is added to Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

Article 2. Alternative Dispute Resolution

1369.510. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding at the option of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this title.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents of a common interest development.

1369.520. (a) An association or an owner or a member of a common interest development may not file an enforcement action unless the parties have endeavored to submit their dispute to alternative dispute resolution.

(b) This section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000). Except as provided in Section 1366.3, this section does not apply to an action for association assessments. This section does not apply to a small claims action.

1369.530. (a) Any party to a dispute may initiate the process required by Section 1369.520 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

(1) A brief description of the dispute between the parties.

1 (2) A request for alternative dispute resolution.

2 (3) A notice that the party receiving the Request for Resolution
3 is required to respond within 30 days of receipt or the request will
4 be deemed rejected.

5 (4) If the party on whom the request is served is the owner of
6 a separate interest, a copy of this article.

7 (b) Service of the Request for Resolution shall be by personal
8 delivery, first class mail, express mail, facsimile transmission, or
9 other means reasonably calculated to provide the party on whom
10 the request is served actual notice of the request.

11 (c) A party on whom a Request for Resolution is served has 30
12 days following service to accept or reject the request. If a party
13 does not accept the request within that period, the request is
14 deemed rejected by the party.

15 1369.540. (a) If the party on whom a Request for Resolution
16 is served accepts the request, the parties shall complete the
17 alternative dispute resolution within 90 days after the party
18 initiating the request receives the acceptance, unless this period is
19 extended by written stipulation signed by both parties.

20 (b) Chapter 2 (commencing with Section 1115) of Division 9
21 of the Evidence Code applies to any form of alternative dispute
22 resolution initiated by a Request for Resolution under this article,
23 other than arbitration.

24 (c) The costs of the alternative dispute resolution shall be borne
25 by the parties.

26 1369.550. If the applicable time limitation for commencing
27 an enforcement action would run within 120 days after service of
28 a Request for Resolution, the time limitation is extended to the
29 120th day after service. If the parties have stipulated to an
30 extension of the alternative dispute resolution period beyond the
31 120th day after service of a Request for Resolution pursuant to
32 Section 1369.540, a time limitation that would expire during the
33 alternative dispute resolution period is extended to the end of the
34 stipulated period.

35 1369.560. (a) At the time of commencement of an
36 enforcement action, the party commencing the action shall file
37 with the initial pleading a certificate stating that alternative dispute
38 resolution has been completed in compliance with this article.



(b) Failure to file a certificate pursuant to subdivision (a) is grounds for a demurrer or a motion to strike unless one of the following conditions is satisfied:

(1) The party commencing the action certifies in writing that one of the other parties to the dispute refused alternative dispute resolution before commencement of the action, or that preliminary or temporary injunctive relief is necessary.

(2) The court finds that dismissal of the action for failure to comply with this article would result in substantial prejudice to one of the parties.

1369.570. (a) After an enforcement action is commenced, on written stipulation of the parties the matter may be referred to alternative dispute resolution and stayed.

(b) The costs of the alternative dispute resolution shall be borne by the parties.

(c) During a referral, the action is not subject to the rules implementing subdivision (c) of Section 68603 of the Government Code.

1369.580. In an enforcement action in which fees and costs may be awarded, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution before commencement of the action.

1369.590. (a) An association shall annually provide its members a summary of the provisions of this article that specifically references this article. The summary shall include the following language:

“Failure of a member of the association to comply with the prefiling requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.”

(b) The summary shall be provided either at the time the pro forma budget required by Section 1365 is distributed or in the manner prescribed in Section 5016 of the Corporations Code.

SEC. 7. Section 383 of the Code of Civil Procedure is repealed.

~~383. (a) An association established to manage a common interest development shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or~~

1 ~~administrative proceedings in its own name as the real party in~~
2 ~~interest and without joining with it the individual owners of the~~
3 ~~common interest development, in matters pertaining to the~~
4 ~~following:~~

5 ~~(1) Enforcement of the governing documents.~~

6 ~~(2) Damage to the common areas.~~

7 ~~(3) Damage to the separate interests which the association is~~
8 ~~obligated to maintain or repair.~~

9 ~~(4) Damage to the separate interests which arises out of, or is~~
10 ~~integrally related to, damage to the common areas or separate~~
11 ~~interests that the association is obligated to maintain or repair.~~

12 ~~(b) In any action maintained by an association pursuant to~~
13 ~~paragraph (2), (3), or (4) of subdivision (a), the amount of damages~~
14 ~~recovered by the association shall be reduced by the amount of~~
15 ~~damages allocated to the association or its managing agents in~~
16 ~~direct proportion to their percentage of fault based upon principles~~
17 ~~of comparative fault. In such an action, the comparative fault of the~~
18 ~~association or its managing agents may be raised by way of~~
19 ~~defense, but shall not be the basis for any cross-action or separate~~
20 ~~action against the association or its managing agents for~~
21 ~~contribution or implied indemnity, where the only damage was~~
22 ~~sustained by the association or its members. It is the intent of the~~
23 ~~Legislature in enacting this subdivision to require that~~
24 ~~comparative fault be plead as an affirmative defense, rather than~~
25 ~~a separate cause of action, where the only damage was sustained~~
26 ~~by the association or its members.~~

27 ~~(c) In any action involving damages described in paragraph (2),~~
28 ~~(3), or (4) of subdivision (a), the defendant or cross-defendant may~~
29 ~~allege and prove the comparative fault of the association or its~~
30 ~~managing agents as a setoff to his or her liability even if the~~
31 ~~association is not a party to the litigation or is no longer a party~~
32 ~~whether by reason of settlement, dismissal, or otherwise.~~

33 ~~(d) Subdivisions (b) and (c) apply to actions commenced on or~~
34 ~~after January 1, 1993.~~

35 ~~(e) Nothing in this section shall affect (1) any person's liability~~
36 ~~under Section 1431 of the Civil Code, or (2) the liability of the~~
37 ~~association or its managing agent for any act or omission which~~
38 ~~causes damages to another.~~